IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4872 of 1985
with
CIVIL APPLICATION NO. 1185 OF 1988

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

SMT. DIVYABALA N.PATEL

Versus

THE STATE OF GUJARAT

Appearance:
MR PV HATHI for Petitioner
RULE SERVED for Respondent No. 1
MR DG CHAUHAN for Respondent No. 2

CORAM : CHIEF JUSTICE MR DM DHARMADHIKARI

Date of decision: 19/04/2001

ORAL JUDGEMENT

#. This Petition under Article 226 had been filed against the communication dated 22-3-1985 (Annexure K) of the Executive Engineer, Public Health Engineering Department of the State, whereby the representation of the petitioner to condone break in her services between 15-12-1976 to 11-1-1980 has been rejected.

#. From the service record of the petitioner as given in the body of the Petition and as explained to me by the learned counsel appearing for the petitioner, it appears that the petitioner has been a victim of circumstances and thereby lost continuity of service. She has a checkered record of service. She started service as W.C. Typist on 7-11-1974 in the Mechanical Division under the Superintending Engineer in the Public Health Engineering Department. For sometime she was brought on the temporary establishment as Typist under order dated 24-12-1975, but by order dated 2-4-1976, she was again reverted and posted as W.C. Clerk in Tube Well Division of the Public Health Engineering Department.

#. On telephonic instruction of respondent no. 2 Superintending Engineer, by order dated 14-12-1976, she was discharged from service to accommodate one Mr. V.I. Gamit. This was done ignoring the fact that the petitioner was senior in the list of W.C. employees. When this mistake was discovered, the Superintending Engineer issued an order on 15-12-1976 for absorption of the petitioner on regular establishment. The relevant part of the order of absorption issued in favour of the petitioner dated 15-12-1976 reads as under:-

> "Superintending Engineers of the circles shown in col.No.4 are requested to issue posting orders of the above referred W.C.Karkoons immediately by terminating the services of the Junior most persons shown in Col.No.5 as the case may be Break in service if any should be regularised as per Government orders in force."

#. After passing the above order of absorption in favour of the petitioner with the recommendation for regularising the period of break in service, the petitioner has been representing to the Department by several representations which have been annexed to the petition. As late as in the year 1980 by order dated 11-1-1980 pursuant to the order of absorption dated 15-12-1976 the petitioner was given posting in Public Health Mechanical Department (Stores). Despite the delay in giving the posting order pursuant to her absorption as per the recommendation made in the order of absorption dated 15-12-1976 (quoted above) the Government did not consider the question of condoning the break in her service. The petitioner after joining again sent repeated representations to the Government to condone the break in service which occurred for no fault on the part of the petitioner and because of a mistake on the part of the Department. During the intervening period, the

Officers in the Department of Public Health Engineering Department stood transferred to Gujarat Water Supply and Sewerage Board which is an Undertaking of the State covered by definition of `State' under Article 12 of the Constitution. The Chief Executive Officer of the Sewerage Board by its letter dated 11-1-1985 addressed to Secretary, Public Health Engineering Department recommended the case of the petitioner that her claim for condonation of break in her service had justification.

#. Thereafter, by the impugned communication dated 22-2-1985, the Executive Engineer, Public Health Engineering Department turned down the request of the petitioner for condonation of period of break in service stating that the Government had not accepted such a request.

#. The petition is pending in this Court since the year 1985, but no reply affidavit has been filed by the State or by the Board. The factual averments made in the Petition, therefore, remain uncontroverted. The resume of the service career of the petitioner as mentioned above, clearly goes to show that there was a mistake in first reverting the petitioner by ignoring her seniority from regular establishment to workcharge establishment and there was undue delay on the part of the Department in giving her posting pursuant to the order of absorption in her favour passed on 15-12-1976. The petitioner has suffered in her seniority and continuity of service for no fault on her part. The order of absorption was made in her favour on 15-12-1976. She was actually posted on 11-1-1980. This period of break between 15-12-1976 and 11-1-1980 is liable to be condoned regardless of any Rules or Circulars in existence. The petitioner's case is one of extraordinary nature. Firstly, she was wrongly relieved from regular establishment to workcharge established by ignoring her seniority and thereafter there was delay in giving posting pursuant to her absorption. This period of break in service between 15-12-1976 and 11-1-1980 is liable to be sympathetically considered for condonation by the State Government.

#. Learned counsel for the petitioner states that in the services of the Board by interim directions of the court the petitioner was allowed to take up training and seems to have also got promotion to the post of Senior Clerk. The break in service, however, is likely to affect her terminal benefits. After hearing the counsel appearing for the petitioner and the State, for the reasons mentioned by me above, the petition deserves to be allowed. There has been a break in service of the

petitioner between 15-12-1976 and 11-1-1980 only because of the mistake and delay committed by the Department. The period between 15-12-1976 and 11-1-1980, therefore, deserves to be condoned and shall not be treated as break in service but only for the limited purpose of giving her terminal or other pensionary benefits. This period shall not be treated as break in service for the purpose of calculating the monetary benefits including terminal benefits but shall not be counted for any other purpose like seniority or promotion.

With the above directions, the Petition succeeds and is allowed. Rule is made absolute. In the circumstances, the petitioner will also be entitled to costs from respondent no. 1 which is quantified at Rs. 1000/-. Direct service is permitted.

(D.M. DHARMADHIKARI, C.J.)

[sndevu]